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The rule of law and transitional justice in conflict and post-conflict societies

Report of the Secretary-General

Summary

The present report is submitted at the request of the Security Council (see S/PRST/2010/11) to take stock of progress made in implementing the recommendations contained in the 2004 report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), and to consider in this context further steps to promote the rule of law.

United Nations rule of law initiatives are indispensable to international peace and security. In conflict and post-conflict settings the United Nations assists countries in establishing the rule of law by ensuring accountability and reinforcing norms, building confidence in justice and security institutions, and promoting gender equality. The Organization is increasingly focused on emerging threats to the rule of law, such as organized crime and illicit trafficking, and the root causes of conflict, including economic and social justice issues.

Going forward, increased support for multilateral efforts will bring much needed predictability and accountability to the rule of law field. Enhanced political will, stronger efforts to build national ownership and greater use of objective measures of progress will help ensure the sustainability and impact of national reform initiatives.

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I. Introduction

1. On 26 June 2010, the Security Council considered the item entitled "The promotion and strengthening of the rule of law in the maintenance of international peace and security". Subsequently, on 29 June, the Council requested the Secretary-General provide a follow-up report to take stock of the progress made in implementing the recommendations contained in the 2004 report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), and to consider in this context further steps to promote the rule of law (see S/PRST/2010/11). Following consultations with Member States, United Nations entities, civil society organizations and independent experts, I hereby submit the requested report.

2. The aforementioned previous report on the rule of law and transitional justice in conflict and post-conflict societies articulated a common language for "justice", "rule of law" and "transitional justice", from which a robust and coherent discourse has evolved. The report also defined the normative foundation for our assistance, namely the Charter of the United Nations, together with the four pillars of the modern international legal system — international human rights law, international humanitarian law, international criminal law and international refugee law — and the wealth of United Nations human rights, crime prevention and criminal justice standards.

3. In the seven years since that report, the United Nations has marshalled significant international attention to the importance of the rule of law at the national and international levels. This is evidenced by the 2005 World Summit Outcome (resolution 60/1), the 2006 report of the Secretary-General, entitled "Uniting our strengths: enhancing United Nations support for the rule of law" (A/61/636-S/2006/980) and, since 2008, the annual reports of the Secretary-General on strengthening and coordinating United Nations rule of law activities (A/63/226, A/64/298, A/65/318 and A/66/133). In 2012 a high-level meeting of the General Assembly on the rule of law at the national and international levels during the high-level segment of its sixty-seventh session will further underscore the Organization's commitment to widening international interest and support.

4. Since 2004, our approaches in strengthening the rule of law have become more clearly articulated. In conflict and post-conflict societies, the United Nations assists countries in establishing the rule of law by ensuring accountability and reinforcing norms, building confidence in justice and security institutions, and promoting gender equality. The Organization is increasingly focused on emerging threats to the rule of law, such as organized crime and illicit trafficking, and the root causes of conflict, including economic and social justice issues. These efforts are proving to be indispensable to a wider peace and security agenda. Still, Member States and national stakeholders rightfully demand more predictability, accountability and effectiveness in the Organization's activities. Admittedly, greater efforts are needed to ensure a unified approach to the rule of law, address gaps in evidence-based programming and integrate security sector reform into the wider rule of law framework. In addition, more is required to increase levels of national ownership, promote donor coordination and foster political will.

5. Timing is critical in all our endeavours. In the Middle East, North Africa and elsewhere, grass-roots demand for greater accountability, transparency and the rule

of law is driving political changes at a breathtaking pace. As the present report is being drafted, rapidly developing situations in Côte d'Ivoire, Egypt, Libya, South Sudan, the Syria Arab Republic and Tunisia are placing significant demands on our expertise, testing the limits of our capacities. To date, the United Nations rule of law sector has never faced such stark challenges, or such historic opportunities.

II. The rule of law and the peace and security agenda

6. It is increasingly recognized that States marked by ineffective governance, repressive policies, poverty, high rates of violent crime and impunity pose significant threats to international peace and security. Deep capacity deficits in State justice and security institutions, exacerbated by widespread corruption and political interference, lead to diminishing levels of citizen security and economic opportunity. Resentment, distrust or outright hostility towards the Government grows. Radicalized ideological movements often stand ready to harness these sentiments, inciting marginalized groups, unemployed youth and criminal elements to challenge the established order through violent means. Transnational organized crime emerges in parallel with increasing instability, stoking new forms of violence, while further undermining the legitimacy and competence of State institutions.

7. For societies emerging from conflict, weak justice and security institutions struggle to manage the wider socio-economic and political challenges inherent in recovery processes. Institutional actors may prove to be incapable or unwilling to pursue accountability for serious crimes of the past. Civil society is not yet in a position to hold institutions accountable. In the absence of responsive Government, large swaths of the population may turn to belligerents for their justice and security needs, lending legitimacy to terrorist organizations and warlords. Civic trust is at a nadir, undermining collective efforts to meet rule of law challenges. The risk of relapse into violent conflict only increases with time.

8. A deepening appreciation of the challenges and risks that rule of law deficits pose to international peace and security informs a growing discussion among Member States on the impact that insecurity has on sustainable development and the achievement of the Millennium Development Goals. The Organization's efforts to reinforce norms, promote accountability, build confidence in institutions and address gender inequality stand at the nexus of this emerging dialogue. As recently highlighted in the World Bank *World Development Report 2011*, these efforts are key to facilitating complex processes of social, political and institutional transformation that break cycles of violence and activate economic recovery.

III. Promoting the rule of law at multiple levels

9. Since 2004, there is increased recognition that strengthening the rule of law requires more than technical expertise and programmatic support. Expressions of political will and increased leveraging of our collective interests through coherent and coordinated action by a wide range of actors at multiple levels are essential.

10. As evidenced by a multitude of thematic resolutions and country-specific mandates, the Security Council is playing an increased role in promoting the rule of law. Since 2004, the Council has made references to the rule of law and transitional

justice in well over 160 resolutions, a marked increase over the same period prior to the 2004 report of the Secretary-General. The Council has also mandated support for the rule of law in many peacekeeping and special political missions, including in Afghanistan, Burundi, the Central African Republic, Chad, Côte d'Ivoire, the Democratic Republic of the Congo, Guinea-Bissau, Haiti, Iraq, Liberia, Sierra Leone, South Sudan, the Sudan and Timor-Leste.

11. Rule of law and transitional justice activities are also increasingly integrated into Security Council resolutions prescribing actions in thematic areas. For example, in its resolutions 1674 (2006) and 1894 (2009), the Council notes the important role of security sector reform and accountability mechanisms in the protection of civilians in armed conflict. Council resolutions 1612 (2005), 1882 (2009) and 1998 (2011) establish monitoring and reporting mechanisms that gather timely, accurate and objective information on grave child rights violations. These mechanisms are complemented by action plans that hold States responsible for such violations. Similarly, increased focus has been given to women's justice and security needs through Council resolutions 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010).

12. Supplementing the robust efforts of the Security Council, United Nations envoys and representatives are increasingly promoting the rule of law and transitional justice initiatives in peace agreements. The United Nations policy to reject any endorsement of amnesty for genocide, war crimes, crimes against humanity, or gross violations of human rights outlined in the 2004 report is increasingly reflected in peace agreements, ceasefires and other arrangements; blanket amnesties are considerably less pervasive today. However, the incorporation of justice and accountability measures in peace agreements remains uneven.

13. It is important for the Security Council to adhere to basic rule of law principles to ensure the legitimacy of its actions. The establishment of the international criminal tribunals and the maintenance of complex sanctions regimes, among other initiatives, have raised questions as to the binding nature of international law on the Council. The expansion of the mandate of the Ombudsperson under the Al-Qaida sanctions regime, pursuant to Council resolution 1989 (2011), and the increased use of the International Court of Justice to clarify legal elements of international disputes, are steps that can strengthen the legitimacy of Council actions. The Court's role in the maintenance of international peace and security is further enhanced where Member States accept its compulsory jurisdiction.

14. United Nations in-country leaders, including Special Representatives, Deputy Special Representatives and United Nations resident coordinators, are raising the profile of the rule of law agenda in such countries as Colombia, Côte d'Ivoire, the Democratic Republic of the Congo, Haiti, Liberia and Nepal. Their leadership is critical to bringing greater coordination among the Organization's entities and to advocating on their behalf on issues of concern in high-level meetings with national counterparts. Mindful that conflict and post-conflict settings are complex environments with many competing priorities, Headquarters must provide more robust rule of law policy and operational guidance to field leadership.

15. There is growing awareness that the successful promotion of the rule of law requires more active coordination between the United Nations, Member States and national stakeholders. Member States contribute the vast majority of donor funding for rule of law initiatives through bilateral programmes, often in parallel with

multilateral efforts and national strategies. Improved coordination among bilateral programmes, in conjunction with the United Nations and in line with nationally owned strategies, can lead to more effective and efficient use of resources. Coordination can be assisted where rule of law programmes are financed through pooled funding arrangements and existing funding mechanisms. Financial resources should provide incentives for joint programming within the United Nations system and with external partners. Increasing calls from both donor and recipient countries for an international donor coordination mechanism for the rule of law sector should be given consideration.

16. Efforts to build the rule of law require the support and involvement of national stakeholders to ensure the authority and legitimacy required for rule of law initiatives to achieve results. The involvement of national actors in coordinating and developing rule of law strategies should be further encouraged. Complementing this effort, national perspectives from a wide range of stakeholders, including women and marginalized groups, must be integrated in the design, implementation, monitoring and evaluation of rule of law and transitional justice interventions.

IV. Ensuring accountability and reinforcing norms

17. Transitional justice initiatives promote accountability, reinforce respect for human rights and are critical to fostering the strong levels of civic trust required to bolster rule of law reform, economic development and democratic governance. Transitional justice initiatives may encompass both judicial and non-judicial mechanisms, including individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals.

18. Since 2004, transitional justice initiatives have become well-established components of the wider United Nations rule of law framework and indispensable elements of post-conflict strategic planning. United Nations experience has grown considerably, leading to more comprehensive and sophisticated approaches. Robust national consultations are now understood to be essential prerequisites to ensure that transitional justice mechanisms reflect the needs of conflict-affected communities, including victims. There is also growing evidence that transitional justice measures that evolve over time and involve strong national ownership result in greater political stability in post-conflict settings.

19. The United Nations has strengthened the normative framework supporting transitional justice, including the right to justice, truth and guarantees of non-recurrence. Of particular note, the General Assembly reaffirmed the right of victims to reparations in 2005 through the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex).

20. There is currently wider acknowledgement that transitional justice processes and institutional capacity-building are mutually reinforcing. It is recognized, for example, that vetting procedures and national prosecutions can assist in dismantling abusive State structures and criminal networks that would otherwise impede efforts to strengthen justice and security institutions. The reports of truth commissions can expose patterns of violations, raise awareness about the rights of victims and offer road maps for reform. Transitional justice processes can serve to build the capacities

of national justice and security actors where these are included in the design and implementation of national prosecution initiatives or invested in the outcomes of truth-telling efforts. Broader institutional capacity-building, in turn, can provide a safer environment for authorities to conduct investigations, or for witnesses and victims to participate in truth-telling mechanisms. Though linkages between transitional justice processes and institutional capacity-building have been strengthened since 2004, greater commitments to integrate our approaches are required going forward.

21. The Organization must ensure the full inclusiveness of marginalized populations, including displaced persons, refugees, women and children. There is increased recognition that the voluntary participation of children in transitional justice mechanisms enhances accountability and promotes reconciliation. Judicial and non-judicial mechanisms are increasingly holding perpetrators accountable for violence against children. However, children who participate in these mechanisms must be supported by child-friendly policies, procedures and practices. Furthermore, there is a need to develop common minimum standards on children and transitional justice.

22. Since 2004, women and girls have increasingly participated in transitional justice processes and have highlighted the grave consequences of forced displacement, abduction, sexual and gender-based violence, and violations of economic and social rights. Going forward, mandates for transitional justice processes should ensure that the perspectives of women and children are taken into account. Furthermore, there is a need for gender-sensitive procedures to protect victims and witnesses, and to provide greater levels of age-appropriate psychosocial support. To guide future efforts, evaluations of the impact of transitional justice measures on women and children must be conducted on a more systematic basis.

23. Such non-judicial mechanisms as truth commissions can play a significant role in enhancing accountability for human rights abuses. They can signal a break with the past and assist in engendering trust and confidence in newly reconstituted justice and security institutions. Since 2004, truth commissions have been established in such places as Kenya (2008), Liberia (2005), Timor-Leste (2005) and the Solomon Islands (2008), with new efforts under way in Burundi, Côte d'Ivoire, Nepal and Uganda.

24. Experience reveals that truth commissions can quickly lose credibility when not properly resourced, planned and managed, thereby undermining the very confidence they are intended to build. Truth commissions will likely falter where they are introduced too early in the political process, are manipulated for political gain or involve insufficient efforts to solicit stakeholder input, including such hard to reach populations such as displaced persons and refugees. Strong national ownership is essential. Unfortunately, Governments have a mixed record of compliance with truth commission recommendations, evidencing the need for follow-up mechanisms and active and long-term political engagement from the international community and civil society. United Nations support for the implementation of recommendations needs to be incorporated early in planning processes. There is growing recognition that truth commissions should also address the economic, social and cultural rights dimensions of conflict to enhance long-term peace and security.

25. Commissions of inquiry are increasingly viewed as effective tools to draw out facts necessary for wider accountability efforts. Since 2004, international inquiries have examined situations in Côte d'Ivoire, Guinea, Lebanon, Liberia, Libya, Pakistan, the Solomon Islands, the Sudan (Darfur), the Syrian Arab Republic, Timor-Leste and the occupied Palestinian territories (Gaza). These inquiries have encouraged national authorities to take action and are laying the groundwork for prosecutions. In addition, the Council has relied on commissions of inquiry to refer cases to the International Criminal Court, as in Darfur. Commissions of inquiry have also made a range of broader recommendations for non-judicial measures, including truth-seeking, reparations and institutional reform. With the support of dedicated investigative capacity, commissions of inquiry have proven to be essential in establishing the use of sexual violence as a tactic of war.

26. As noted in the 2004 report of the Secretary-General, States have an obligation to act both against perpetrators and on behalf of victims. Reparations are arguably the most victim-centred justice mechanism available and the most significant means of making a difference in the lives of victims. United Nations experience demonstrates that reparations may facilitate reconciliation and confidence in the State, and thus lead to a more stable and durable peace in post-conflict societies. Reparations to victims can also reduce community resentment towards incentive-based disarmament, demobilization and reintegration programmes, and strengthen victims' participation in reconstruction efforts. The United Nations is currently assisting Member States to fulfil their obligations to provide reparations, building institutional capacity, where necessary. Reparations efforts are ongoing in Colombia, Guatemala, Nepal, Sierra Leone, Timor-Leste and Uganda.

27. Reparations are also increasingly recognized as an important vehicle to address gender inequality, a root cause of violence against women and girls. Reparations for survivors of sexual and gender-based violence must link redress for individuals with efforts to eliminate economic and social marginalization, including through increased access to health, education, property rights and positive redistributive measures. Though the right of children to a remedy is well established, few child victims have benefited from reparations programmes to date. Children's needs must be more fully expressed in the design of reparations programmes. Furthermore, increased efforts are required to ensure that both international and national criminal prosecutions are well-resourced to offer reparations together with convictions. Reparations initiatives require greater administrative and political support.

28. The Organization continues to play a leading role in bringing persons accused of serious international crimes to justice. The ad hoc international tribunals for the former Yugoslavia and for Rwanda, and the Special Court for Sierra Leone continue to strengthen norms supporting international criminal accountability. For example, the Special Court has paved the way for sanctioning individuals for child-specific violations and delivered seminal jurisprudence on forced marriages. Furthermore, the tribunals' efforts in gathering and categorizing large amounts of documentation ensure that history cannot be distorted later for political ends. The Special Tribunal for Lebanon, established to prosecute persons responsible for the attack resulting in the death of former Prime Minister Rafiq Hariri, commenced operations in 2009. The majority of the judges in each Chamber of the Tribunal are international judges.

29. The International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Special Court for Sierra Leone have progressed significantly in their completion strategies, transferring cases of low-level indictees to national jurisdictions, in the case of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and making archives accessible to the public. The International Residual Mechanism for Criminal Tribunals has been established, with branches in Arusha, for the International Criminal Tribunal for Rwanda, and in The Hague, for the International Tribunal for the Former Yugoslavia. Similarly, the Residual Special Court for Sierra Leone has been established to carry out the functions of the Special Court for Sierra Leone after the Charles Taylor case is concluded. The ongoing need for outreach regarding these courts will be an important consideration in years to come.

30. Recent years have seen a significant trend towards the establishment of "hybrid" mechanisms, such as the Extraordinary Chambers in the Courts of Cambodia, which began functioning in 2006, and the International Commission against Impunity in Guatemala, which began functioning in 2007. Hybrid mechanisms are often composed of both international and national judges and prosecutors, and are sometimes set in specialized chambers in domestic jurisdictions. They have proven to be less costly compared to ad hoc tribunals and more accessible to affected communities. Usually located in situ, the potential for hybrid tribunals to build confidence in the State is substantial. They may also assist in building the capacity of national justice systems where they draw heavily on national prosecutors and judges. The Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, the Special Tribunal for Lebanon, the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia do not allow for the death penalty.

31. The International Criminal Court, which began its work on 1 July 2002 when the Rome Statute came into force, has been joined by 118 States. It has opened investigations into six situations, indicting 16 people, 5 of whom are in custody. Three indictees have appeared voluntarily before the Court. The Security Council has referred the situations in Darfur and Libya for investigation to the Court, signalling that international criminal accountability is a priority of the international community. However, the cooperation of States in enforcing other international arrest warrants remains problematic: of the 26 individuals subject to International Criminal Court arrest warrants or summonses, 10 remain at large. The International Criminal Tribunal for Rwanda has nine outstanding indictments. The Council must insist upon full cooperation with international and hybrid tribunals, including in the surrender of accused persons upon request.

32. As noted in the 2004 report of the Secretary-General, domestic justice systems should be the first resort in the pursuit of accountability. However, where these systems are unable or unwilling to prosecute perpetrators of international crimes, the international community stands ready to respond. National institutions often do not have the capacity and resources to handle complex cases involving crimes of an international character or involving high-level suspects. For example, in conflict-affected contexts there may be deep deficits in investigative and prosecutorial skill sets required to analyse documentary and testimonial evidence, and prioritize case selection. There may also be substantial shortcomings in witness protection support measures and archival storage systems. The specialized requirements of international criminal prosecutions must be more consistently mainstreamed into

capacity-building at the national level. Efforts must be made to implement the full architecture of the Rome Statute, including rules of procedure and evidence, elements of crimes, witness assistance and reparations and gender advisers. The development of national capacities to deal with serious crimes will be more cost-effective and will strengthen national justice systems as a whole. Therefore, the United Nations system is involved in a coordinated effort to assist national authorities to implement complementarity between the International Criminal Court and national-level jurisdictions. Given the potential scope of actors and activities involved, coordination among donors and national stakeholders on funding and technical assistance initiatives is essential. The United Nations is well positioned to provide a home for such coordination efforts.

V. Building confidence in national justice and security institutions

33. The United Nations employs a variety of capacity-building, legal reform and rights awareness activities that build confidence and legitimacy in national justice and security institutions. Since 2004, the Organization's approaches have expanded to encompass greater levels of national ownership, more concerted efforts at sector-wide approaches and more emphasis on initiatives to facilitate access to justice.

34. Among the most significant developments since 2004, national actors are playing a larger role in the promotion, design and implementation of rule of law programmes, increasing the prospects for sustainable impact. More rule of law programmes are currently led by and aligned with national development strategies, as found in Afghanistan, Kenya, Liberia and South Sudan. The United Nations has drawn more substantially on the capacities of national civil society organizations to guide and facilitate access to justice. National ownership of rule of law programmes is enhanced where national authorities are trained in programme design, management, monitoring and evaluation. Advancing national ownership requires greater commitments of leadership and political and financial support from national actors. As demonstrated in contexts as diverse as Indonesia, Liberia and Timor-Leste, national leadership is a strong factor driving institutional development.

35. Since 2004, it is increasingly evident that our capacity-building efforts must focus on police, prosecutors, judiciary and corrections in a sector-wide approach to strengthening the rule of law. In many scenarios, significant efforts to equip and train police are not met by similar capacity-building investments in the justice and corrections sectors. High rates of pre-trial detentions result, leading to overcrowded prison conditions and increased risks of riots and breakouts of serious criminals. Despite a greater focus since 2004, more support is required to provide the human resources and infrastructure that ensure humane conditions for detainees. More efforts are required to employ mobile courts, legal defence and case tracking systems to reduce case processing delays that lead to prison overcrowding. As deprivation of liberty remains a common form of punishment for juvenile offenders, more focus on diversion, alternatives to detention and restorative justice is required.

36. In many conflict and post-conflict environments, case processing delays are compounded by poor judicial decision-making, as judges and prosecutors frequently have inadequate or no formal legal training and few legal resources. Furthermore, court administration systems are generally weak or have broken down completely

and the skills needed to run them are in short supply. Recognizing this, United Nations capacity-building efforts focus on increasing administrative efficiency, professionalism and compliance with international norms and standards. Training in evidentiary rules and procedure, together with efforts to harmonize justice sector policies, have elicited immediate, visible and significant results in such countries as Guinea, Liberia, Sierra Leone and Timor-Leste. In Somaliland, the Organization's efforts have substantially increased the rate and quality of criminal adjudications. In the Democratic Republic of the Congo, the United Nations has quadrupled the pool of police investigators. The prosecution support cells, mandated under Security Council resolutions 1925 (2010) and 1991 (2011) to assist Congolese military justice authorities in prosecuting alleged violators of human rights, will significantly increase prosecutorial capacity.

37. Access to courts is often obstructed by prohibitive costs, corruption and sociocultural biases. Among the most significant developments since 2004, United Nations access to justice programmes have assisted tens of thousands of vulnerable individuals in obtaining justice. Through support to legal aid, training of public defenders and paralegal assistance, rights awareness and close engagement with informal justice leaders, access to justice programming has led to significant increases in convictions for violent crimes, including sexual and gender-based violence. In Guatemala, Liberia, Sierra Leone, Somalia and the Sudan, access to justice efforts is not only helping to end impunity, but is also strengthening institutional capacity through public pressure. Mobile courts are particularly important tools supporting access to justice for rural, displaced and refugee populations.

38. As resources and attention increase, the systemic impact of access to justice programming must be more clearly assessed. Efforts to identify and support litigation that challenges wider policies or laws impacting on vulnerable groups, otherwise known as advocacy litigation, must be the focus of greater attention of United Nations legal assistance programmes. Better witness protection programmes and referral networks are also called for, especially in cases involving sexual and gender-based violence. Greater integration of child perspectives as victims and witnesses of crime would also enhance access to justice programming.

39. In many post-conflict settings, informal justice mechanisms are the only available recourse to serve the public's justice needs. Recognizing the potential of informal mechanisms in strengthening the rule of law, the Organization has increased its understanding of informal justice systems. While providing timely and enforceable decisions, the Organization is aware of their uneven compliance with international norms and standards, and pervasive gender bias. The United Nations assists in building linkages between informal and formal systems, for example in Liberia, Nepal, Somalia and Timor-Leste. The potential role of informal justice practices to enhance peace and security through traditional mediation techniques has been recognized.

40. A chronic lack of judicial independence, impartiality and integrity severely undermines institutional legitimacy and may exacerbate inter-group tensions, resulting in increased risk of violent conflict. Greater efforts are required, in particular in the context of the United Nations Convention against Corruption, to ensure constitutional guarantees of judicial independence, judicial control over internal management issues, merit-based judicial appointments, strengthened legal

professional associations and well-refined disciplinary mechanisms and procedures. Unfortunately, the Organization's efforts have had limited results to date. More coordinated political engagement by all actors — United Nations leadership in the field, the international diplomatic community, the Security Council and other United Nations organs, regional organizations and international financial institutions — must be leveraged to produce results. At the country level, civil society organizations must be empowered to monitor and provide oversight of criminal and civil justice institutions. Finally, more efforts can also be made to strengthen legal defence capacity in order to mitigate abuse of power and ensure due process.

VI. Promoting gender equality through greater access to justice

41. In many settings, women and girls face violence, economic and political marginalization, and the denial of basic rights. Gender inequality is at the root of these conditions, fuelled by discrimination in such areas as employment, political rights, education, health care and property rights. Weak legal frameworks abet discriminatory policies and practices of institutions, limiting women's access to legal redress. Gender biases of State justice and security actors discourage women and girls from reporting crimes against them and result in greater attrition. Conflict exacerbates existing conditions of inequality, enabling and encouraging the proliferation of the most vicious forms of gender-based violence, including the widespread use of sexual violence as a tactic of war. Conflict also destroys community and social networks, pushing women and the families that depend on them further into destitution and cycles of poverty.

42. Since 2004, there has been increased understanding that women and girls are impacted uniquely and disproportionately by the direct and indirect effects of conflict and its aftermath. This has begun to inform the development of rule of law interventions that specifically address women's justice and security concerns. There are currently more efforts to reform discriminatory legislation, enhance access to justice and end impunity for crimes of sexual and gender-based violence, and to ensure women's participation in institutions and peacebuilding forums as part of a comprehensive response to create transformational change in the lives of women and girls. United Nations programmes have been strengthened by Security Council resolutions 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010), calling for practical steps to end impunity for sexual and gender-based violence, ensure gender-responsive justice reforms and secure women's participation in all aspects of post-conflict recovery, including justice and security sector reform. In particular, the team of experts, established in 2010 under paragraph 8 of resolution 1888 (2009), is specifically mandated to strengthen national capacities for countering impunity for sexual violence and has already been active in the Democratic Republic of the Congo, Somalia and South Sudan.

43. Experience reveals that State focus on political stability can delay necessary legislative action addressing violence against women. Civil society advocacy and transitional justice interventions are important in spurring legislative and attitudinal changes. In Sierra Leone, the Truth and Reconciliation Commission process helped generate momentum for subsequent legislation that enhanced rights and security for women, including by criminalizing domestic violence. Successful legislative reform addressing sexual and gender-based violence, family, property and land tenure issues in Colombia, Nepal, Rwanda and Uganda are potent symbols of national

commitment to end violence against women and girls. However, too often the passage of legislation is not followed by implementation. Implementation is more likely when accompanied by a comprehensive policy framework which includes dedicated funding modalities and a national action plan or strategy. The Organization must continue its efforts to monitor laws to ensure their enforcement and effectiveness.

44. In conflict and post-conflict settings, a chronic failure of justice institutions to be responsive to women's rights and concerns results in high levels of underreporting and attrition. Since 2004, more efforts have been made to ensure that the mandates, procedures and organizational cultures of justice and security institutions are gender sensitive. Greater provision of legal aid, paralegal support and awareness-raising efforts are empowering women. As a result of these initiatives, more perpetrators of sexual and gender-based violence are being brought to justice in such countries as Chad, the Democratic Republic of the Congo, Nepal, Sierra Leone, South Sudan, the Sudan and Kosovo. The growing use of mobile courts is complementing these developments, bringing judges and prosecutors to otherwise remote crime scenes in eastern Chad, eastern Democratic Republic of the Congo, Haiti, Nepal and elsewhere.

45. A significant increase in funding for women's access to justice programmes is needed. Such initiatives need to focus on underlying economic and social issues driving inequality. Furthermore, a holistic approach to access to justice that addresses physical, psychological and wide socio-economic consequences of violations is required. In Burundi, Liberia and Somalia, one-stop centres that offer survivors medical care, psychological counselling, access to police investigators and legal assistance in one location are proving to be successful at mitigating secondary victimization and reducing court delays, while improving conviction rates.

46. The Organization must also continue to promote women's participation in defining the scope, remit and design of all post-conflict justice mechanisms to increase access to justice in line with resolution 1325 (2000). Discrimination can be addressed through women's participation in justice and security institutions. Increasing the number of women professionals can be facilitated by programmes encouraging women to pursue legal careers and through mandatory minimum quotas for women's involvement in the administration of justice.

VII. Addressing emerging threats and root causes of conflict

47. Transnational organized crime is taking root in conflict and post-conflict settings, constituting an emerging threat to peace and security, development and the rule of law. In particular, piracy and illicit trafficking are fostering high levels of violent crime and contributing to cross-border instability. Networks of organized criminal groups are challenging the State's monopoly on the use of force. Law enforcement authorities can lag behind organized crime groups in organizational skill, employment of new technology and networking. Insufficient cooperation among law enforcement agencies within and across borders can hinder progress. At the same time, growing levels of corruption and money-laundering, critical to facilitating transnational organized crime, are weakening economies and draining Governments of revenues.

48. Recognized as a cause and consequence of instability, transnational organized crime is increasingly addressed through long-term capacity-building efforts within the wider rule of law framework. In Somalia, for example, the Organization's counter-piracy strategies include the provision of technical assistance to judges and prosecutors on anti-piracy laws, legal aid and prisons capacity. There is also greater recognition that transnational organized crime should be addressed in the immediate post-conflict environment of United Nations engagement to prevent criminal syndicates from quickly consolidating and institutionalizing their influence. The increasing use of United Nations organized crime assessments for host countries of United Nations peace operations is a promising development.

49. There is growing acknowledgement that regional approaches are required to address transnational organized crime, involving close cooperation and capacity-building at both the national and regional levels. The Organization is increasingly focused on enhancing trans-border intelligence sharing and law enforcement cooperation. Together with important political changes in the region, the Organization's support of the West African Coast Initiative, in cooperation with the Economic Community of West African States, appears to have substantially reduced drug trafficking through West Africa after 2007. More detentions and the prosecution of pirates in Djibouti, Kenya and the Seychelles has resulted from improved coordination, infrastructure and capacity in the policing, prosecutorial and prison administration sectors.

50. The United Nations should increasingly integrate transnational organized crime approaches into rule of law programming. Improved inter-agency cooperation is required to enhance results. Long-term solutions to transnational organized crime, informed by the United Nations Convention against Transnational Organized Crime and its Protocols, may require a focus on the delivery of basic services by justice and security institutions. Specialized courts and investigative units that address specific forms of crimes, including corruption, may be needed in some circumstances. The tracking and disruption of financial flows to piracy and drug trafficking ringleaders, as well as support for more thorough investigations into unexplained wealth, are also necessary. Gains against corruption can offset the development of transnational organized crime, build confidence in the State and restore norms. Strong political will is required, without which anti-corruption bodies offer only false promise. Coordinated advocacy from the diplomatic community, national stakeholders, the private sector and United Nations leadership are required to give life to anti-corruption and asset recovery efforts.

51. In addition to the threats that transnational organized crimes pose, festering grievances based on violations of economic and social rights are increasingly recognized for their potential to spark violent conflict. Displacement and large-scale returns of civilian populations bring to the fore disputes related to housing, land, property and natural resource extraction. Yet, these issues are critical to peace and security in multiple settings. Statelessness is also increasingly recognized as a significant source of insecurity, human rights violations, forced displacement and violent conflict. The Organization is committed to supporting and promoting action to prevent statelessness, in particular by redressing discrimination as a common cause and consequence of statelessness, and by ensuring the respect of the human rights of stateless persons.

52. The United Nations must promote dialogue on the realization of economic and social rights, and provide concrete results through transitional justice mechanisms, legal reform, capacity-building, and land and identity registration efforts, among other initiatives. The Organization's assistance to legal reform can ensure that, inter alia, constitutional protections are calibrated to address the right to economic and social justice of marginalized groups. In this regard, the development of permanent capacities at the United Nations to provide advice and collect best practices on constitution-making is in order. Furthermore, access to justice programming should be broadened to include family, land and property, and legal documentation issues, as it has in Pakistan, Sri Lanka and the Sudan. Peace agreements can be important tools to record early commitments to land, birth and other registration initiatives.

53. The Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005) mark an important step in the emergence of internationally agreed best practice on housing, land and property rights issues in post-conflict settings. Still, there is need for a wider United Nations institutional and policy framework to address housing, land and property rights more comprehensively, as these rights can contribute to reconciliation and early recovery. The links between housing, land and property policies, and wider development initiatives must be explored further. The need for State security guarantees, together with restitution awards, should also be considered. Reparations mechanisms that compensate returnees for the illegal occupation of their property show promising results and should be replicated. Strengthening of the administrative justice capacities of land commissions must also be undertaken more widely.

54. Since 2004, there has been growing awareness of the important role of economic development and employment in facilitating peacebuilding and recovery. Rule of law interventions can support economic development when focused on protecting the rights of the poor and providing them with greater control over their resources. Increased access to justice through legal aid and rights awareness can also protect the interests of small-scale landholders, traders and merchants from elite predation. The Organization is working to strengthen the linkages between the rule of law and economic development programming in the Democratic Republic of the Congo, Iraq and the Sudan. Increased knowledge of the ways in which functioning justice and security institutions, and robust legislative frameworks, including international trade law, help facilitate investment and development will be needed going forward.

VIII. Delivering more predictable, accountable and effective rule of law assistance

55. The United Nations has made genuine progress towards more coherent and coordinated approaches in its rule of law engagement. Yet, the Organization must enhance predictability, accountability and effectiveness through increased field-level coordination, stronger policy coherence and enhanced United Nations system arrangements.

56. In 2007 the Secretary-General established the Rule of Law Coordination and Resource Group, an inter-agency coordination mechanism responsible for the overall coordination and coherence of rule of law within the United Nations system.

Chaired by the Deputy Secretary-General and supported by the Rule of Law Assistance Unit, the Group consists of the principals of nine departments and agencies actively engaged on the rule of law. In my 2006 report, entitled "Uniting our strengths: enhancing United Nations support for the rule of law" (A/61/636-S/2006/980), I further proposed a system of non-exclusive lead entities for rule of law subsectors. Moreover, as mentioned in my recent report on civilian capacity in the aftermath of conflict (A/66/311-S/2011/527), I am committed to establishing a more practical, flexible approach to identifying capacities and gaps through the use of focal points at Headquarters covering key peacebuilding areas, including justice and security.

57. There has been steady progress towards greater coordination and coherence at the field level. Rule of law issues are systematically integrated into the strategic and inter-agency planning of peace operations. In humanitarian settings, rule of law activities are one of the five areas of responsibility under the protection cluster. United Nations entities undertake joint assessments and strategy development initiatives more frequently, as shown by recent efforts in eastern Chad, Guinea-Bissau and Haiti. Joint programming in peacekeeping settings, such as the Democratic Republic of the Congo and South Sudan, and in the framework of the West African Coast Initiative, has significantly strengthened delivery of technical support. In Colombia, Nepal and Uganda joint programming efforts are leading to increased access to justice for women. Mandates promoting multi-year, joint justice programmes, such as those found in Côte d'Ivoire and the Democratic Republic of the Congo, are critical to fostering coherence and coordination, and should be replicated.

58. There is no standard model for joint programming. Instead, arrangements are driven by specific field conditions. Owing mainly to contrasting operational procedures of different entities, obstacles to joint programming are still evident. Cooperation is required to better align operational procedures while developing system-wide incentives for joint programming. Moreover, coordination at the field level will be enhanced through the clear and joint articulation of goals, strategies and appropriate implementation methodologies. In peacekeeping settings the development of shared goals at an early stage will facilitate a gradual drawdown of a mission and ensure effective transition of responsibilities, where appropriate. The greater use of joint baselines, indicators and benchmarks is critical to avoid gaps in key rule of law areas and should be mandated in post-conflict settings.

59. Joint monitoring mechanisms uniting the State, civil society, donors and United Nations entities around common indicators can be useful to ensure coordinated efforts and the sector-wide evaluation of impact. To date, attempts to measure the Organization's effectiveness have been hampered by incomplete baseline data, weak and competing monitoring and evaluation frameworks, and a lack of incentives to share results between entities. Other challenges include a lack of national capacity in administrative data collection and analysis. The development, system-wide endorsement and implementation of the United Nations Rule of Law Indicators to monitor changes in the performance of criminal justice institutions is a welcome achievement. This endeavour, as well as such other initiatives as the Manual for the Measurement of Juvenile Justice Indicators, is a positive indication that the Organization is intensifying its focus on results.

60. Greater coordination and coherence of rule of law policy has improved considerably since 2004 through a formal process of review and endorsement under the auspices of the Rule of Law Coordination and Research Group. The endorsement procedure ensures that all programmes and policies supporting constitutional, judicial and legislative reform promote gender equality. Since 2004, six guidance notes on substantive rule of law topics have been issued, bringing clarity to United Nations positions and approaches. These notes are particularly important in enhancing a shared understanding of policy direction at the field level. Good practices and lessons learned have also been disseminated through numerous technical-level workshops and new system-wide training. The United Nations rule of law website and document repository centralizes policy and guidance materials, and is accessible for field staff, external practitioners and the general public.

61. The recruitment, training and retention of field-based professionals remain critical challenges for the United Nations. Promising initiatives in response to these challenges include the establishment of the Standing Police Capacity and the Justice and Corrections Standing Capacity, as well as the recent deployment of civilian justice experts on mission to the Democratic Republic of the Congo and Haiti. The civilian capacity review should be helpful in drawing attention to the importance of collaborating with external partners.

62. Despite wide recognition of the importance of the rule of law to peace and security, the United Nations rule of law sector remains under-resourced relative to the size of its task. Increased assessed budget funds for rule of law interventions are needed to ensure that peacekeeping operations and special political missions reach their mandate objectives. Where capacities and presence allow, missions can and should initiate activities for a mandated function for which the voluntary funds are not available or have not yet been mobilized. Such measures should be assessed in the light of comparative advantage in that context and the work carried out by other actors, while respecting the fundamental competencies and mandates of the United Nations entities. The use of other United Nations actors to discharge mandated and budgeted functions for which they are well equipped can offer practical advantages, including engagement with an entity often present in the country or area before a mission deploys and likely to be present after the mission leaves. Pooled funding mechanisms have also demonstrated their potential to save considerable overhead expenditures and should be employed in greater measure.

IX. Moving forward: conclusions and recommendations

63. The United Nations is among the most potent symbols of international commitment to peace, engendering among conflict-affected people the trust and confidence required to consolidate action towards long-term rule of law objectives. Often the first international organization on the ground during and in the immediate aftermath of conflict, the United Nations is well placed to demonstrate early, visible and tangible gains towards the rule of law that, in turn, build public confidence in political settlements. Recognizing this, greater investments of financial and political capital in the Organization's rule of law initiatives must be made to meet the multidimensional challenge of the current peace and security agenda.

A. Considerations for negotiations, peace agreements and mandates

64. The Security Council is encouraged to strengthen its support for the International Court of Justice by, inter alia, requesting advisory opinions and recommending that parties refer matters to international adjudication, where appropriate.

65. The Security Council should encourage United Nations leadership, including United Nations resident coordinators and Special Representatives of the Secretary-General, to continue to voice support for activities and programmes which strengthen the rule of law in high-level dialogue with national authorities.

66. When designing mandates, the Security Council is encouraged to consider making explicit references to the need for transitional justice measures, where relevant, bearing in mind the specific concerns of women and children.

67. The Security Council is encouraged to reject any endorsement of amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights and to support the implementation of transitional justice and rule of law provisions in peace agreements.

68. The Security Council should encourage further attention to the rights of victims to a remedy and reparations, in particular the victims of conflict-related sexual and gender-based violence.

69. The Security Council should continue to foster accountability for gross violations of human rights and serious violations of international humanitarian law, including by supporting the implementation of recommendations of international commissions of inquiry.

70. The Security Council should encourage all Member States to cooperate fully with international and hybrid mechanisms established by the United Nations or with its support and consider mandating regular reporting on State cooperation in the apprehension of indicted crime suspects.

71. The Security Council should continue to mandate the development and implementation of multi-year joint United Nations programmes for police, judicial and corrections institutions, and ensure that they are assessed, planned, implemented, monitored and evaluated jointly.

72. The Security Council should encourage the regular implementation of the United Nations Rule of Law Indicators by national and international stakeholders as a key instrument for measuring the strengths and effectiveness of law enforcement, judicial and correctional institutions in conflict and post-conflict situations. As a means of strengthening the Organization's approach to measuring the effectiveness of rule of law assistance, the Council should also mandate baseline statistical surveys, benchmarking exercises and regular reporting against indicators of progress.

73. Taking into consideration resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010), the Security Council should encourage the incorporation of gender perspectives in all rule of law programmes, in particular with regard to the training of law enforcement and justice personnel. Where appropriate, the Council should encourage the empowerment and funding of specialized police units and investigative magistrates to enable them to investigate crimes relating to sexual violence. Furthermore, the Council should encourage greater investment in women's access to justice initiatives.

74. The Security Council should encourage Member States to nominate civilian justice experts to support United Nations entities engaged in the rule of law sector.

75. The Security Council should encourage the inclusion of increased funding for mandated functions in support of justice and security institutions in the assessed budget of peacekeeping operations and special political missions. In some cases the mission can and should initiate activities for a mandated function for which the voluntary funds are not available or have not yet been mobilized. Such measures should be assessed in the light of comparative advantage in that context and the work carried out by other actors, while respecting the fundamental competencies and mandates of United Nations entities.

76. The Security Council should encourage States to accommodate persons acquitted by international criminal tribunals, or persons who have served their sentence following a conviction and who cannot for reasons of security return to their country of nationality.

B. Considerations for the United Nations system

77. I will work together with the International Criminal Court and donors to enhance coordination so as to provide coherent and holistic support to national authorities to enable them to prosecute perpetrators of serious international crimes.

78. I will ensure that transitional justice mechanisms provide for a comprehensive framework of child protection and participation. Such mechanisms should be in conformity with the Convention on the Rights of the Child and other international legal standards and obligations.

79. I will support initiatives to strengthen the development approach to the rule of law, promote capacity-building of justice and security institutions, and integrate support for access to justice and transitional justice mechanisms, while encouraging joint approaches under United Nations leadership in these fields.

80. I aim to further develop agreed policies on access to justice, including anchoring such policies in the promotion of social and economic rights, and in the peaceful resolution of civil disputes, such as those related to housing, land and property rights.

81. I plan to coordinate widely, both internally and with the relevant national authorities, to provide effective support to national and regional capacity to combat transnational organized crimes and to set up appropriate anti-corruption bodies to support such endeavours.

82. I will also ensure that the United Nations will respond promptly and holistically to requests by national authorities to assist with constitution-making and legislative reform processes, and act as a repository of best practices and comparative experiences.

83. I will strengthen the Organization's commitment to support and promote action to prevent statelessness, including by redressing discrimination as a common cause and consequence of statelessness, and to ensure the respect of the human rights of stateless persons.